

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

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AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C.
3535(d).

SOURCE: 49 FR 7697, Mar. 1, 1984, unless oth-
erwise noted.

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Depart-

ment's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.103 Authority.

The HUDAR is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the Secretary's delegation effective January 19, 1976, 41 FR 2665, and the general authorization in FAR 1.301.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996, as amended at 64 FR 46094, Aug. 23, 1999]

2401.104 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996]

2401.105

2401.105 Issuance.

2401.105-2 Arrangement of regulations.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, FAR 14.407, Award, does not contain a provision for the steps to be taken when only one bid is received. The HUDAR provides this information. Since the subject matter supplements what is contained in FAR 14.407, the HUDAR section supplementing the FAR is numbered 2414.407-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with FEDERAL REGISTER standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.105-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.105-2(c)." Any section of the HUDAR may be formally identified by the section

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number, e.g., "HUDAR 2401.105-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

[49 FR 7697, Mar. 1, 1984, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19470, May 1, 1996, as amended at 64 FR 46094, Aug. 23, 1999]

2401.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535-0091.

[50 FR 46575, Nov. 8, 1985. Redesignated at 61 FR 19470, May 1, 1996]

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

In individual cases, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive (see 2401.601-70) for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reasons for

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granting the deviation, consistent with FAR 1.402. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986; 53 FR 46533, Nov. 17, 1988]

2401.404 Class deviations.

For deviations which affect more than one contracting action, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive for approval or other necessary or appropriate action. Requests for deviations shall be supported by statements which fully disclose the nature of the deviation and the need there of. The Senior Procurement Executive will consider the proposal on an expedited basis and in the case of a proposed FAR deviation will comply with FAR 1.404.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

2401.601 General.

2401.601-70 Senior Procurement Executive.

The Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement system meets approved criteria.

[57 FR 59787, Dec. 15, 1992, as amended at 64 FR 46094, Aug. 23, 1999]

2401.601-71 Office of Procurement and Contracts.

The Office of Procurement and Contracts, within the Office of the Chief

Procurement Officer, including its Field Contracting Operations, is responsible for all Departmental procurement.

[64 FR 46094, Aug. 23, 1999]

2401.602 Contracting Officers.

2401.602-3 Ratification of unauthorized commitments.

(b)(1) *Policy.* A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and forwarded to the HCA or designee for approval.

(b)(3) The HCA may delegate authority to approve ratifications below the simplified acquisition threshold to:

(i) Contracting division directors (Headquarters); or,

(ii) Contracting branch chiefs (Field).

(c)(5) Legal concurrence may be requested if there is a legal issue involved, e.g. the propriety of the funding source, appropriateness of the expense, etc.

[60 FR 46154, Sept. 5, 1995]

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation and ethics of the individual to be appointed. The appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute and/or administer, and any other limitations on the scope of the authority to be exercised. In the area of experience, education and training, the following shall be required, unless contracting authority is limited to simplified acquisition procedures:

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(a) Experience, for appointment of an individual to a position having Contracting Officer authority, shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a government or commercial procurement office. Alternatively, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for the appointment.

(b) Educational requirements for an individual in a position having Contracting Officer authority shall be, as a minimum, the equivalent of a Bachelor's Degree from an accredited college or institution preferably with major studies in Business Administration, Law, Accounting or related fields. Experience related to the field of procurement involved (e.g., supply construction, etc.), gained in a government or nongovernment contracting office, may be substituted for educational requirements when it is determined in writing and made a part of the appointment files (as stipulated in 2401.603-3(b)) that a potential appointee is otherwise qualified by virtue of extensive contract-related experience or training.

(c) Training courses as prescribed by the Senior Procurement Executive.

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all personnel whose primary duties are performed as a Contracting Officer.

[49 FR 7697, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59787, Dec. 15, 1992; 64 FR 46094, Aug. 23, 1999]

2401.603-3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603-2.

[64 FR 46094, Aug. 23, 1999]

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PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.

2402.000 Scope of part.

Subpart 2402.1—Definitions

2402.101 Definitions.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Accounting Office means the Office of Accounting Operations within the Office of the Chief Financial Officer and includes that Office's field components.

Chief Procurement Officer means the HUD official having authority for all of the Department's procurement activities.

Department means the Department of Housing and Urban Development, which may also be designated as HUD.

Government Technical Monitor (GTM) means the individual responsible for assisting a Government Technical Representative in the latter's performance of his/her duties.

Government Technical Representative (GTR) means the individual serving as the Contracting Officer's representative responsible for monitoring the technical aspects of a contract, including guidance, oversight, and evaluation of the Contractor's performance and deliverables.

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

- (1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement; and
- (2) The Directors, Field Contracting Operations, for field procurement.

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Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent Departmental management (e.g., President, GNMA, Inspector General, General Counsel, Chief Procurement Officer, etc.).

Secretary means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive means the Chief Procurement Officer.

[64 FR 46094, Aug. 23, 1999]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2403.1—Safeguards

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2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

2403.204 Treatment of violations.

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2403.303-70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502-70 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.602 Policy.

2403.670 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 5 CFR part 2635 and 5 CFR part 7501.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203-3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees**2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the government's right to void the contract or to recover the fee.

(3) Initiate suspension or debarment action.

(4) Refer suspected fraudulent or criminal matters to the Office of Inspector General for possible referral to the Department of Justice.

[49 FR 7700, Mar. 1, 1984. Redesignated at 64 FR 46095, Aug. 23, 1999]

Subpart 2403.5—Other Improper Business Practices**2403.502-70 Subcontractor kickbacks.**

Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of the Inspector General consistent with the procedures for reporting any violation of law contained in the current HUD Handbook 2000.3, Office of Inspector General Activities.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**2403.602 Policy.**

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986. Redesignated at 64 FR 46095, Aug. 23, 1999]

2403.670 Solicitation provision and contract clause.

Insert the clause at 48 CFR 2452.203-70 in all solicitations and contracts.

[65 FR 3576, Jan. 21, 2000]

PART 2404—ADMINISTRATIVE MATTERS

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2404.8—Government Contract Files**2404.805 Storage, handling and disposal of contract files.**

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award.

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Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activ-

ity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984. Redesignated and amended at 60 FR 46155, Sept. 5, 1995]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.2—Synopsis of Proposed Contract Actions

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2405.202 Exceptions.

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.2—Synopsis of Proposed Contract Actions

2405.202 Exceptions.

(b) The Senior Procurement Executive shall make the written determination in accordance with FAR 5.202(b) that advance notice of proposed contract actions is not appropriate or reasonable.

[50 FR 46576, Nov. 8, 1985]

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Re-delegations of Authority, subject to the availability of funds.

[49 FR 7701, Mar. 1, 1984]

PART 2406—COMPETITION REQUIREMENTS

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

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2406.202 Establishing or maintaining alternative sources.

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.
2406.304-70 Approval of the justification—field procurements.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 50 FR 46576, Nov. 8, 1985, unless otherwise noted.

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

2406.202 Establishing or maintaining alternative sources.

(b)(1) The HCA shall sign the Determination and Finding (D&F) required by FAR 6.202(b)(1).

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.

(c) A class justification for other than full and open competition shall be approved in writing by the Senior Procurement Executive.

2406.304-70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract more than \$1 million but not exceeding \$10 million, by the Director, Office of Procurement and Contracts.

[60 FR 46155, Sept. 5, 1995]

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

The Senior Procurement Executive shall designate the Department's competition advocate by FEDERAL REGISTER notice. Contracting activity-level competition advocates shall be appointed by each HCA.

[60 FR 46155, Sept. 5, 1995]

PART 2407—ACQUISITION PLANNING

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures to implement the Department's Advance Procurement Planning System (APPS). The APPS should generally meet the criteria contained in FAR subpart 7.1.

[49 FR 7701, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

Sec.

2409.503 Waiver.

2409.507 Solicitation provisions and contract clause.

2409.507-1 Solicitation provisions.

2409.507-2 Contract clauses.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.7001 HUD regulations on debarment, suspension, and ineligibility.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.5—Organizational and Consultant Conflicts of In- terest

2409.503 Waiver.

The Senior Procurement Executive is authorized to waive any general rule or procedure in FAR Subpart 9.5 by determining that its application to a particular situation would not be in the Government's interest.

[57 FR 59788, Dec. 15, 1992]

2409.507 Solicitation provisions and contract clause.

2409.507-1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209-70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

[65 FR 3576, Jan. 21, 2000]

2409.507-2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209-71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation. The Contracting Officer shall insert the clause at 2452.209-72, Organizational Conflicts of Interest, in all contracts.

[65 FR 12951, Mar. 10, 2000]

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.7001 HUD regulations on debar- ment, suspension, and ineligibility.

Departmental policies and procedures concerning debarment and suspension are contained in 24 CFR part 24.

[49 FR 7701, Mar. 1, 1984. Redesignated at 64 FR 46095, Aug. 23, 1999]

PART 2411—DESCRIBING AGENCY NEEDS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2411.404

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**Subpart 2411.4—Delivery or
Performance Schedules**

Contract Period, in all solicitations
and contracts.

2411.404 Contract clause.

[61 FR 19470, May 1, 1996]

(a) The Contracting Officer may insert the clause at 48 CFR 2452.211-70,

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

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2413.301 Governmentwide commercial purchase card.

2413.305-2 Agency responsibilities.

2413.305-3 Conditions for use.

2413.307 Forms.

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders [Reserved]

2413.505 Purchase order and related forms.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

2413.301 Governmentwide commercial purchase card.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305-2 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305-3 Conditions for use.

(a) Transaction limits above that established in FAR 13.305-3 may be ap-

proved by the Senior Procurement Executive.

[60 FR 46155, Sept. 5, 1995. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

2413.307 Forms.

(b) For purchases charged to the FHA Fund using simplified acquisition procedures, contracting officers may use Form HUD-2542, Purchase Order and Payment Authorization.

[61 FR 19470, May 1, 1996. Redesignated at 64 FR 46095, Aug. 23, 1999]

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

PART 2414—SEALED BIDDING

Subpart 2414.4—Opening of bids and Award of Contracts

Sec.

2414.404 Rejection of bids.

2414.404-1 Cancellation of invitations after opening.

2414.407 Mistakes in bid.

2414.407-3 Other mistakes disclosed before award.

2414.407-4 Mistakes after award.

2414.408 Award.

2414.408-70 Award when only one bid is received.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7702, Mar. 1, 1984, unless otherwise noted.

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.404 Rejection of bids.

2414.404-1 Cancellation of invitations after opening.

(c) Invitations may be cancelled and all bids rejected before award but after

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opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404-1.

[50 FR 46577, Nov. 8, 1985]

2414.407 Mistakes in bids.

2414.407-3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

[57 FR 59788, Dec. 15, 1992. Redesignated at 61 FR 19470, May 1, 1996]

2414.407-4 Mistakes after award.

(d) For determinations under FAR 14.407-4(b), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

[61 FR 19470, May 1, 1996, as amended at 64 FR 46095, Aug. 23, 1999]

2414.408 Award.

2414.408-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19471, May 1, 1996]

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PART 2415—CONTRACTING BY NEGOTIATION

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AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

Subpart 2415.2—Solicitation and Receipt of Proposals and Information

2415.204 Contract format.

(e) The cognizant HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

[64 FR 46095, Aug. 23, 1999]

2415.209 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215-70, Proposal Content, in all solicitations for negotiated procurements using the trade-off selection process expected to exceed the simplified acquisition threshold. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provisions may be used in simplified acquisitions when it is necessary to obtain technical and

management information in making the award selection. When award selection will be made through the lowest price technically acceptable method, the provision shall be used with its Alternate I. If the proposed contract requires work on or access to sensitive automated systems or applications (see the clause at 48 CFR 2452.239-70), the provision shall be used with its Alternate II.

[64 FR 46095, Aug. 23, 1999]

Subpart 2415.3—Source Selection

2415.303 Responsibilities.

(a) In accordance with FAR 15.303, the source selection authorities are designated as follows:

(1) The Contracting Officer, for contracts awarded using the “lowest-priced technically-acceptable proposal” process; and,

(2) The head of the office initiating the procurement, or his/her designee, for contracts awarded using the “trade-off” process. The head of the initiating office may also delegate this function to the Contracting Officer.

(3) For procurements for the performance of legal services by outside counsel, using either the “lowest-price technically acceptable” or “tradeoff” approach, the General Counsel or his/her designee.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five members, with one member serving as the chairperson. For procurements involving technical complexity, the TEP may include advisors and committees to focus on specific technical areas or concerns. For relatively low dollar value and routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

[64 FR 46096, Aug. 23, 1999]

2415.304 Evaluation factors.

(d)(1) The solicitation shall state the basis for the source selection decision as either “lowest-price technically acceptable” process (LPTA) or “trade-off process” (as defined at FAR subpart 15.1).

(2) When using the trade-off process, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTA, each evaluation factor is applied on a “pass-fail” basis; numerical scores are not assigned. “Pass-fail” evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

[64 FR 46096, Aug. 23, 1999, as amended at 65 FR 3573, Jan. 21, 2000]

2415.305 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the trade-off process, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. A technical evaluation report, which complies with FAR 15.305(a)(3), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

[50 FR 46577, Nov. 8, 1985, as amended at 57 FR 59789, Dec. 15, 1992; 60 FR 46156, Sept. 5, 1995; 61 FR 19471, May 1, 1996. Redesignated and amended at 64 FR 46096, Aug. 23, 1999]

2415.308

2415.308 Source selection decision.

After receipt and evaluation of final proposal revisions, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

[64 FR 46096, Aug. 23, 1999]

Subpart 2415.5—Preaward, Award, and Postaward notifications, Protests, and Mistakes

2415.507 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985. Redesignated at 61 FR 19471, May 1, 1996, and further redesignated at 64 FR 46096, Aug. 23, 1999]

Subpart 2415.6—Source Selection

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

2415.605 Content of unsolicited proposals.

2415.605-70 Unsolicited research proposals.

FAR subpart 15.6 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

[49 FR 7703, Mar. 1, 1984. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section shall mean proposals for procure-

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ment contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement, unsolicited proposals should be submitted to—

(1) For research—Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit (Room 8228), 451 7th Street, SW, Washington, DC 20410.

(2) For all others—Department of Housing and Urban Development, Director, Office of Procurement and Contracts (NC), 451 7th Street, SW, Washington, DC 20410.

[64 FR 46096, Aug. 23, 1999]

PART 2416—TYPES OF CONTRACTS

Subpart 2416.4—Incentive Contracts

Sec.
2416.406 Contract clauses.

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.
2416.506 Solicitation provisions and contract clauses.
2416.506-70 Unpriced delivery/task orders.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.
2416.603-2 Application.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

Subpart 2416.4—Incentive Contracts

2416.406 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216-70, Estimated Cost, Base Fee, and Award Fee; 2452.216-71, Payment of Base and Award Fee; 2452.216-72, Determination of

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2417.504

Award Fee Earned; 2452.216-73, Performance Evaluation Plan; and 2452.216-74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

[53 FR 46535, Nov. 17, 1988. Redesignated at 64 FR 46096, Aug. 23, 1999]

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

(b)(6) The Departmental competition advocate also serves as the Departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6).

(i) Each HCA shall designate a contracting activity ombudsman for task and delivery order contracts.

(ii) The contracting activity ombudsman shall:

(A) Review complaints from contractors concerning task or delivery orders placed by the contracting activity;

(B) Be independent of the contracting officer who awarded or is administering the contract under which a complaint is submitted;

(C) Recommend any corrective action to the cognizant contracting officer; and

(D) Refer to the Departmental ombudsman issues which cannot be resolved.

(iii) Contractors may request that the Departmental Ombudsman review complaints when they disagree with the contracting activity ombudsman's review.

[64 FR 46096, Aug. 23, 1999]

2416.506 Solicitation provisions and contract clauses.

2416.506-70 Unpriced delivery/task orders.

(e) The contracting officer shall insert the clause at 2452.216-75, Unpriced Task Orders, in contracts for which task orders are individually negotiated and there may be a need to issue unpriced task orders; provided, however, that the contracting officer shall en-

sure that the cost of the work authorized by the task order is not in excess of the funds obligated under the contract.

[57 FR 59790, Dec. 15, 1992. Redesignated at 61 FR 19471, May 1, 1996]

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

(c) The HCA shall approve additional time periods for definitization of letter contracts authorized by the Contracting Officer pursuant to FAR 16.603-2(c).

[64 FR 46096, Aug. 23, 1999]

PART 2417—SPECIAL CONTRACTING METHODS

Subpart 2417.2—Options

2417.204 Contracts.

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

AUTHORITY: 31 U.S.C. 1535; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2417.2—Options

2417.204 Contracts.

(e) The Senior Procurement Executive shall approve any solicitation or contract which exceeds the five (5) year maximum for acquisitions of supplies or services.

[61 FR 19471, May 1, 1996]

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

[53 FR 46535, Nov. 17, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS PROGRAMS

Subpart 2419.2—Policies

Sec.

2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

Subpart 2419.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

2419.708 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2419.2—Policies

2419.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of HUD's small business programs. This includes Department-wide responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged and women-owned small businesses.

(d) Each head of a contracting activity shall designate a small business specialist who shall perform the following functions:

(1) Maintain a program designed to locate capable small business sources as referenced in 48 CFR 2419.201(c) for current and future procurements;

(2) Coordinate inquiries and requests for advice from such businesses on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that all such business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or

Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain participation by such businesses in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from such businesses;

(6) Advise such businesses with respect to the financial assistance available under existing laws and regulations and assist such businesses in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning such businesses participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

[49 FR 7706, Mar. 1, 1984, as amended at 50 FR 46578, Nov. 8, 1985; 61 FR 19471, May 1, 1996]

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

(a) *Class set-aside for construction under the Acquired Property Program.* A class set-aside is hereby made for each proposed procurement for construction under the Real Estate Owned Program with an estimated cost of less than \$1,000,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn with the concurrence of the Head of the Contracting Activity. Proposed procurements for construction which exceed

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2425.402

an estimate of \$1,000,000 shall be considered for set-aside on a case-by-case basis.

[49 FR 7706, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 53 FR 46535, Nov. 17, 1988; 64 FR 46097, Aug. 23, 1999]

Subpart 2419.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

2419.708 Solicitation provisions and contract clauses.

(d) The Contracting Officer shall insert the provision at 2452.219-70 in negotiated solicitations exceeding \$500,000 that are not set aside for small business or 8(a) concerns.

(e) The Contracting Officer shall insert the provision at 2452.219-70 with Alternate I in sealed bid solicitations exceeding \$500,000 that are not set aside for small business or 8(a) concerns.

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.219-71 in solicitations exceeding \$500,000 that are not set aside for small businesses or to be accomplished under the 8(a) program. The Contracting Officer shall insert the clause in all contracts exceeding \$500,000 (\$1,000,000 for construction) that are not awarded to small businesses or to 8(a) business concerns.

[57 FR 59790, Dec. 15, 1992, as amended at 64 FR 46097, Aug. 23, 1999]

PART 2420 [RESERVED]

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46535, Nov. 17, 1988, unless otherwise noted.

Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222-70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2424.1—Protection of Individual Privacy

Sec.

2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

AUTHORITY: 5 U.S.C. 552, 552a; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

See 24 CFR part 15 for the HUD regulations which implement the Freedom of Information Act.

[49 FR 7708, Mar. 1, 1984. Redesignated at 64 FR 46097, Aug. 23, 1999]

PART 2425—TRADE AGREEMENTS ACT

AUTHORITY: 42 U.S.C. 3535(d).

2425.402 Policy.

(a)(1) It is the Department's policy to determine whether the Trade Agreements Act applies based on the total estimated dollar value of the proposed

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acquisition before the solicitation is issued, including all line items and options.

[57 FR 59790, Dec. 15, 1992, as amended at 64 FR 46097, Aug. 23, 1999]

**PART 2426—OTHER
SOCIOECONOMIC PROGRAMS**

**Subpart 2426.70—Minority
Business Enterprises**

2426.7001 Policy.

2426.7002 Responsibility.

2426.7003 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

**Subpart 2426.70—Minority
Business Enterprises**

2426.7001 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

[60 FR 46156, Sept. 5, 1995. Redesignated at 64 FR 46097, Aug. 23, 1999]

2426.7002 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organi-

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zation Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

[60 FR 46157, Sept. 5, 1995. Redesignated at 64 FR 46097, Aug. 23, 1999]

2426.7003 Solicitation provision.

Contracting officers shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226-70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

[60 FR 46157, Sept. 5, 1995. Redesignated at 65 FR 3573, Jan. 21, 2000]

**PART 2427—PATENTS, DATA, AND
COPYRIGHTS**

**Subpart 2427.3—Patent Rights Under
Government Contracts**

Sec.

2427.305 Administration of patent rights clauses.

2427.305-2 Follow-up by contractor.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

**Subpart 2427.3—Patent Rights
Under Government Contracts**

**2427.305 Administration of patent
rights clauses.**

2427.305-2 Follow-up by contractor.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

Subpart 2428.1—Bonds

Sec.

2428.106 Administrative.

2428.106-6 Furnishing information.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

Subpart 2428.1—Bonds

2428.106 Administrative.

2428.106-6 Furnishing information.

(c) The Contracting Officer shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106-6.

[64 FR 46097, Aug. 23, 1999]

PART 2429—TAXES

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2429.1—General

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition

of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

[60 FR 46157, Sept. 5, 1995]

PART 2432—CONTRACT FINANCING

Subpart 2432.1—Non-Commercial Item Purchase Financing

Sec.

2432.114 Unusual contract financing.

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.

2432.407 Interest.

Subpart 2432.7—Contract Funding

2432.703-3 Contracts crossing fiscal years.

Subpart 2432.9—Prompt Payment

2432.903 Policy.

2432.906 Contract financing payments.

2432.908 Contract clauses.

AUTHORITY: 31 U.S.C. 3901-3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2432.1—Non-Commercial Item Purchase Financing

2432.114 Unusual contract financing.

The Senior Procurement Executive is the agency head for the purpose of FAR 32.114.

[65 FR 3573, Jan. 21, 2000; 65 FR 6444, Feb. 9, 2000]

2432.201

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.

(e)(1) The determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the HCA.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

[60 FR 46157, Sept. 5, 1995, as amended at 64 FR 46097, Aug. 23, 1999]

2432.407 Interest.

(d) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.7—Contract Funding

2432.703-3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year.

[65 FR 3573, Jan. 21, 2000]

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Subpart 2432.9—Prompt Payment

2432.903 Policy.

The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.903(b).

[65 FR 3573, Jan. 21, 2000]

2432.906 Contract financing payments.

(a) Except for construction contracts (see FAR 52.232-27), periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the cognizant accounting office to ensure that procedures are in place to allow timely payment.

[60 FR 46157, Sept. 5, 1995, as amended at 64 FR 46097, Aug. 23, 1999]

2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts except those for commercial services awarded pursuant to FAR part 12.

(2) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232-71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office.

[64 FR 46097, Aug. 23, 1999]

PART 2433—PROTESTS, DISPUTES, AND APPEALS

Sec.

2433.000 Scope of part.

Subpart 2433.1—Protests

2433.102 General.

2433.102-70 Responsibility.

2433.103 Protests to the agency.

2433.104 Protests to GAO.

2433.106 Solicitation provision.

AUTHORITY: 31 U.S.C. 3551-3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

Department of Housing and Urban Development

2433.106

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

[51 FR 40333, Nov. 6, 1986]

Subpart 2433.1—Protests

2433.102 General.

2433.102-70 Responsibility.

With the exception of protests filed directly with the Department pursuant to FAR 33.103, the Office of General Counsel has responsibility for handling matters relating to protests against award of contracts by the Department. All written communications from the Department to the GAO or other adjudicating body shall be made by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

[64 FR 46097, Aug. 23, 1999]

2433.103 Protests to the agency.

(d)(2) Appeals of Contracting Officer protest decisions shall include the information required at FAR 33.103(d)(2)(i), (ii), (iii), (iv), (v) and (vi).

(d)(4)(i) Protesters may request an appeal of the Contracting Officer's decision on a protest. Such requests shall be made in writing to the cognizant HCA not later than 10 days after receipt of the Contracting Officer's decision.

(ii) The HCA, in consultation with the Office of General Counsel, shall make all independent reviews of the Contracting Officer's decision requested by protesters in accordance with FAR 33.103(d)(4) and provide the protester with the HCA's decision on the appeal.

(f)(1) A determination by the Contracting Officer to award a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

(f)(3) A determination by the Contracting Officer to not suspend performance of a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in

consultation with the Office of General Counsel.

[64 FR 46097, Aug. 23, 1999]

2433.104 Protests to GAO.

(a)(1) *General.* When advised by GAO of the receipt of a protest, the Office of General Counsel shall immediately inform the contracting activity. The Contracting Officer shall notify the Office of General Counsel upon receipt of the copy of the protest from the protestor.

(2) Upon receipt by the Department of a written request for a formal report relating to a protest, the Office of General Counsel, with appropriate assistance from the Contracting Officer, shall prepare and file the report in accordance with GAO requirements at 4 CFR part 21.

(c) *Protests after award.* Protests received after award shall be treated in the same manner as those filed with GAO before award in accordance with paragraphs (a)(1) and (a)(2) of this section.

(d) *Findings and notice.* When the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 33.104(b)(1)(i-ii), or to continue contractor performance as authorized by FAR 33.104(c)(2), that determination of the intent to make an award or to continue contract performance shall be approved by the HCA after consultation with the Office of General Counsel.

(g) *Notice to GAO.* If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive.

[50 FR 46578, Nov. 8, 1985, as amended at 51 FR 40333, Nov. 6, 1986; 57 FR 59790, Dec. 15, 1992]

2433.106 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.233-70, Review of Contracting Officer Protest Decisions,

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in all solicitations for contracts expected to exceed the simplified acquisition threshold.

[64 FR 46097, Aug. 23, 1999]

**PART 2434—MAJOR SYSTEM
ACQUISITIONS**

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A-109. Such procedures have been set out in internal Departmental directives.

[53 FR 46537, Nov. 17, 1988]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

2436.602-4 Selection authority.

2436.602-5 Short selection processes for contracts not to exceed the small purchase limitation.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) The cognizant program office head for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR Part 0, Standards of Conduct, regarding conflicts of interest. If at any time

during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

[49 FR 7708, Mar. 1, 1984, as amended at 57 FR 59790, Dec. 15, 1992; 60 FR 46157, Sept. 5, 1995; 65 FR 3576, Jan. 21, 2000]

2436.602-4 Selection authority.

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

[65 FR 3577, Jan. 21, 2000]

2436.602-5 Short selection processes for contracts not to exceed the small purchase limitation.

The short selection process described in FAR 36.602-5(a) is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[49 FR 7708, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59791, Dec. 15, 1992; 64 FR 46098, Aug. 23, 1999]

PART 2437—SERVICE CONTRACTING

Subpart 2437.1—Service Contracts—General

Sec.

2437.110 Solicitation provisions and contract clauses.

Subpart 2437.2—Advisory and Assistance Services [Reserved]

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2437.1—Service Contracts—General

2437.110 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.237-70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237-71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237-72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 48 CFR 2452.237-73, Conduct of Work and Technical Guidance, in all service contracts other than contracts for commercial services awarded pursuant to FAR Part 12.

(e) The Contracting Officer shall insert the clause at 48 CFR 2452.237-75, Clearance of Contractor Personnel, in solicitations and contracts when contractor personnel will be required to work in and/or will have access to HUD facilities on a routine, ongoing basis and/or at all hours, e.g., performing custodial, building operations, maintenance, or security services. The clause shall be inserted in all solicitations and contracts for building/facility management and operations services.

The clause may be used for other types of contracts (e.g., information technology services) when suitable as determined by the Contracting Officer.

(f) The Contracting Officer shall insert the clause at 2452.237-77, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

[53 FR 46537, Nov. 17, 1988, as amended at 57 FR 59791, Dec. 15, 1992; 61 FR 19472, May 1, 1996; 64 FR 46098, Aug. 23, 1999]

Subpart 2437.2—Advisory and Assistance Services [Reserved]

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2439.107 Contract clauses.

(a) The Contracting Officer shall insert the clause at 48 CFR 2452.239-70, Background Investigations for Sensitive Automated Systems/Applications, in solicitations and contracts that involve work on, or access to, sensitive Departmental automated information systems or applications as they are defined in the clause.

(b) The contracting officer shall insert the clause at 48 CFR 2452.239-71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

[64 FR 46098, Aug. 23, 1999, as amended at 65 FR 3577, Jan. 21, 2000]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

Subpart 2442.7—Indirect Cost Rates

Sec.

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

2442.1107 Contract clause.

Subpart 2442.15—Contractor Performance Information

2442.1502 Policy.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services of a developmental or advisory nature exceeding \$500,000 shall include a requirement for the use of systematic project planning and progress reporting. The Contracting Officer may require the use of such project planning and reporting systems for contracts below the above threshold.

[65 FR 3577, Jan. 21, 2000]

2442.1107 Contract clause.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.242-71, Project Management System, in solicitations and contracts for services as described in 2442.1106 expected to exceed \$500,000. Use of this clause below the stated threshold is at the discretion of the Contracting Officer.

[65 FR 3577, Jan. 21, 2000]

Subpart 2442.15—Contractor Performance Information

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

2442.1502 Policy.

The Chief Procurement Officer is responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

Subpart 2446.7—Warranties

2446.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246-70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by someone other than the Government Technical Representative (GTR).

2446.710

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

[57 FR 59791, Dec. 15, 1992]

PART 2449—TERMINATION OF CONTRACTS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to

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ensure the independent review of proposed termination settlements in excess of \$100,000.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 2451.70—Contractor Use of Government Discount Travel Rates

Sec.

2451.7001 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

Subpart 2451.70—Contractor Use of Government Discount Travel Rates

2451.7001 Contract clause.

The Contracting Officer shall insert the clause at 48 CFR 2452.251-70, Contractor Employee Travel, in cost-reimbursement solicitations and contracts involving contractor travel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.

- 2452.203-70 Prohibition against the use of Federal employees.
- 2452.209-70 Potential organizational conflicts of interest.
- 2452.209-71 Limitation on future contracts.
- 2452.209-72 Organizational conflicts of interest.
- 2452.211-70 Contract period.
- 2452.215-70 Proposal content.
- 2452.216-70 Estimated cost, base fee, and award fee.
- 2452.216-71 Payment of base and award fee.
- 2452.216-72 Determination of award fee earned.
- 2452.216-73 Performance evaluation plan.
- 2452.216-74 Distribution of award fee.
- 2452.216-75 Unpriced task orders.
- 2452.219-70 Small, small disadvantaged, and women-owned small business subcontracting plan.
- 2452.219-71 Submission of subcontracting reports.
- 2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
- 2452.226-70 Certification of status as a minority business enterprise.
- 2452.232-70 Payment schedule and invoice submission (fixed-price).
- 2452.232-71 Voucher submission (cost-reimbursement).
- 2452.233-70 Review of contracting officer protest decisions.
- 2452.237-70 Key personnel.
- 2452.237-71 Reproduction of reports.
- 2452.237-72 Coordination of data collection activities.
- 2452.237-73 Conduct of work and technical guidance.
- 2452.237-75 Clearance of contractor personnel.
- 2452.237-77 Observance of legal holidays and administrative leave.
- 2452.239-70 Background investigations for sensitive automated systems/applications.
- 2452.239-71 Information Technology Virus Security.
- 2452.242-70 Indirect costs.
- 2452.242-71 Project management system.
- 2452.246-70 Inspection and acceptance.
- 2452.251-70 Contractor employee travel.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

Subpart 2452.2—Texts of Provisions and Clauses

2452.203-70 Prohibition against the use of Federal employees.⁵

As prescribed in 2403.670, insert the following clause in solicitations and contracts:

PROHIBITION AGAINST THE USE OF FEDERAL EMPLOYEES (DEC 1992)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to Federal employees or a business concern or other organization owned or substantially owned or controlled by one or more Federal employees. For the purposes of this contract, this prohibition against the use of Federal employees includes any work performed by the Contractor or any of its employees, subcontractors, or consultants.

(End of clause)

[57 FR 59791, Dec. 15, 1992]

2452.209-70 Potential organizational conflicts of interest.

As prescribed in 2409.507-1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST (FEB. 2000)

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract

⁵This HUDAR clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

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and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

[65 FR 3577, Jan. 21, 2000]

2452.209-71 Limitation on future contracts.

As prescribed in 2409.507-2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

LIMITATION ON FUTURE CONTRACTS (FEB 2000)

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[*Contracting Officer insert description*].

(e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

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(End of clause)

[65 FR 3577, Jan. 21, 2000]

2452.209-72 Organizational conflicts of interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.211-70 Contract period.

As prescribed in 2411.404(a), insert the following clause in all solicitations and contracts:

CONTRACT PERIOD (APR 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within _____ months from the effective date of the contract.

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(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated and amended at 61 FR 19472, May 1, 1996]

2452.215-70 Proposal Content.

As prescribed in 2415.209(a), insert a provision substantially the same as the following:

PROPOSAL CONTENT (FEB 2000)

(a) Proposals shall be submitted in two parts as described in paragraphs (b) and (c) below. Each of the parts must be complete in itself so that evaluation of each part may be conducted independently, and so that the technical and management part may be evaluated strictly on its own merit. Proposals shall be submitted in the format, if any, prescribed elsewhere in this solicitation. Proposals shall be enclosed in sealed packaging and addressed to the office specified in the solicitation. The offeror's name and address, the solicitation number and the date and time specified in the solicitation for proposal submission must appear in writing on the outside of the package.

(b) Proposals shall be submitted in original and [insert number] copies of Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management.

(1) *Prior experience.* The offeror shall provide evidence of the offeror's (i.e., firm's or organization's) prior and current experience in performing the work and/or providing the deliverables required by the solicitation.

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance in accomplishing work—including meeting delivery dates and schedules—the same as, or substantially similar to, that required by the solicitation. The offeror shall provide references as follows [Contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and information to support the qualifications—including relevant experience, specialized training and education—of all proposed key personnel (see the clause entitled "Key Personnel" in this solicitation for further definition). The term "personnel" shall include any proposed consultants and subcontractor employees who will perform duties of key personnel.

(4) *Management Capability.* The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(5) *Technical Capability.* The offeror shall provide a detailed description of how he/she

proposes to conduct the work required under the proposed contract.

(6) *Mandatory Minimum Requirements.* The offeror shall provide evidence, including copies of documents, as appropriate of [contracting officer insert description of requirement(s), e.g., licenses, minimum experience, etc., or delete this paragraph if not applicable].

(d) Part II—Business Proposal.

(1) The Offeror shall complete the Representations and Certifications provided in Section K of this solicitation and include them in this Part II.

(2) The offeror shall provide information to support the offeror's proposed costs or prices as prescribed elsewhere in this Section L.

(End of Provision)

Alternate I (OCT 1999)

As prescribed in 2415.209(a), if the award selection will be made through the lowest-priced technically acceptable proposal method, substitute paragraph (c) with the following:

(c) Part I—Technical and Management Information.

(1) *Prior experience.* The offeror shall provide evidence that the offeror's (i.e., firm's or organization's) prior experience meets the following minimum standards: [contracting officer insert specific experience requirements].

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance as follows: [contracting officer insert specific performance requirements]. The offeror shall provide references as follows [contracting officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and evidence that proposed key personnel (see the clause entitled "Key Personnel" elsewhere in this solicitation for definition) meet the minimum qualifications described below. The term "personnel" includes any proposed consultants and subcontractor employees who will perform duties of key personnel. The minimum qualifications are: [contracting officer insert descriptions].

(4) *Management Capability.* The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(End of provision)

Alternate II (Oct 1999)

As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described in

2452.216-70

2452.239-70, add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause at 48 CFR 2452.239-70 in Section I of this solicitation.

(End of Provision)

[61 FR 19472, May 1, 1996, as amended at 64 FR 46098, Aug. 23, 1999; 65 FR 3573, Jan. 21, 2000]

2452.216-70 Estimated cost, base fee, and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

ESTIMATED COST, BASE FEE, AND AWARD FEE (APR 1984)

The estimated cost of this contract is \$ (Insert Amount). A base fee of \$ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of \$ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.

(End of clause)

2452.216-71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

PAYMENT OF BASE AND AWARD FEE (AUG 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

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(End of clause)

2452.216-72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

DETERMINATION OF AWARD FEE EARNED (AUG 1987)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (insert number) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the Contractor within (insert number) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

2452.216-73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

PERFORMANCE EVALUATION PLAN (AUG 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy

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of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 64 FR 46098, Aug. 23, 1999]

2452.216-74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

DISTRIBUTION OF AWARD FEE (APR 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period:
Available Award Fee:

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract. The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" should be substituted for "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(2) The term "base fee" should be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule"; should be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

(End of clause)

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause:

UNPRICED TASK ORDERS (APR 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit

(if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 57 FR 59792, Dec. 15, 1992]

2452.219-70 Small, small disadvantaged, and women-owned small business subcontracting plan.

As prescribed in 2419.708, insert the following provision:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1995)

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUD policy that small business, women-owned small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful offeror shall agree to pursue an effective and comprehensive small business, small disadvantaged business and women-owned small business subcontracting program in compliance with the clause entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of an offeror (see FAR 9.104-3). Therefore, offerors having previous contracts with subcontracting plans shall provide the

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following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small, small disadvantaged and women-owned small business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan." In accordance with that clause, the offeror shall submit the complete subcontracting plan with the response to this solicitation. The content of the final plan is subject to negotiation. Failure to submit a complete subcontracting plan and negotiate its content in good faith shall make the offeror ineligible for the contract award.

(End of provision)

Alternate I (DEC 1992)

This alternate is required for all sealed bid solicitations exceeding \$500,000 (\$1,000,000 for construction) that are not set aside for small business. In such cases, insert the following paragraph (d) for that in the basic clause:

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Alternate I)." The offeror submitting the apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small, small disadvantaged business and women-owned small business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR Subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the bidder ineligible for the contract award.

(End of provision)

(Approved by the Office of Management and Budget under control number 2535-0091)

[57 FR 59792, Dec. 15, 1992, as amended at 60 FR 46159, Sept. 5, 1995; 61 FR 19473, May 1, 1996]

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2452.219-71 Submission of subcontracting reports.

As prescribed in 2419.708(f) insert the following clause:

SUBMISSION OF SUBCONTRACTING REPORTS (OCT 1999)

The Contractor shall submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts and SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, except that, one copy of each form and any attachments shall be submitted to: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of HUD, 451 Seventh Street, SW, Room 3130 (SS), Washington, DC 20410-1000.

(End of clause)

[64 FR 46098, Aug. 23, 1999]

2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts.

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (JUL 1988)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

2452.226-70 Certification of status as a minority business enterprise.

As prescribed in 2426.222-7003, insert the following provision in all solicitations:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE

(AUG 1995)

Bidder, Offeror or Supplier certifies that he or she is, is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is

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owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(CHECK THE BOX APPLICABLE TO YOU)

- ☐ Black Americans
- ☐ Hispanic Americans
- ☐ Native Americans
- ☐ Asian Pacific Americans
- ☐ Asian Indian Americans

[60 FR 46159, Sept. 5, 1995, as amended at 65 FR 3573, Jan. 21, 2000]

2452.232-70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert a clause substantially the same as the

following in all fixed-price solicitations and contracts:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (OCT 1999)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(b) *Payment Schedule.* Payment of the contract price will be made upon completion and acceptance of all work unless a partial payment schedule is included below [Contracting Officer insert schedule information]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1. <input type="checkbox"/>			
2. <input type="checkbox"/>			
3. <input type="checkbox"/>			
(Continue as necessary)			

(c) *Submission of Invoices.* Invoices shall be submitted as follows—original to the payment office identified on the award document (e.g., in Block 12 on the SF-26 or Block 25 on the SF-33, or elsewhere in the contract) and one copy each to the Government Technical Representative and Contracting Officer. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232-25, "Prompt Payment."

To assist the Government in making timely payments, the Contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., in Block 14 on the SF-26 or Block 21 on the SF-33). The Contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(d) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232-33, "Mandatory Information for Electronic Funds Transfer Payment," 52.232.34, "Optional Information for Electronic Funds Transfer Payment," or other supplemental information (contracts for commercial services) as applicable.

[64 FR 46099, Aug. 23, 1999]

2452.232-71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert a clause substantially the same as the following in all cost-reimbursement solicitations and contracts:

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (OCT 1999)

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer—original to the payment office (e.g., in Block 12 on the SF-26 or Block 25 on the SF-33, or elsewhere in the contract) and one copy each to the Government Technical Representative and the Contracting Officer identified on the award document.

To assist the Government in making timely payments, the Contractor is requested to include on each voucher the appropriation number shown on the award document (e.g., Block 14 of the SF-26 or Block 21 of the SF-33). The Contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232-33, "Mandatory Information for Electronic Funds Transfer Payment" or 52.232.34, "Optional Information for Electronic Funds Transfer Payment," as applicable.

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(End of clause)

[64 FR 46099, Aug. 23, 1999]

2452.233-70 Review of Contracting Officer protest decisions.

As prescribed in 2433.106, insert the following provision:

REVIEW OF CONTRACTING OFFICER PROTEST DECISIONS (OCT 1999)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. Such requests shall be made in writing to the cognizant Head of the Contracting Activity (HCA, see definition at HUDAR subpart 2402.1) within 10 days (see FAR 33.101 for the definition of "days") of the protestor's notification of the Contracting Officer's decision.

(b) The cognizant HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of clause)

[64 FR 46099, Aug. 23, 1999]

2452.237-70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

KEY PERSONNEL (APR 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

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(List Key Personnel)

(End of clause)

2452.237-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¾ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducible (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

2452.237-72 Coordination of data collection activities.

As prescribed in 2437.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

COORDINATION OF DATA COLLECTION ACTIVITIES (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501-3520) applies. In that event, the Contractor shall not take

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any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237-73 Conduct of work and technical guidance.

As prescribed in 2437.110(d), insert the following clause in all contracts for services:

CONDUCT OF WORK AND TECHNICAL GUIDANCE (OCT 1999)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is [insert name] or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

(1) Causes the Contractor to perform work outside the scope of the contract;

(2) Constitutes a change as defined in FAR 52.243-1;

(3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or,

(5) Changes any of the other express terms or conditions of the contract.

(c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone facsimile or electronic mail.

(End of clause)

[64 FR 46099, Aug. 23, 1999]

2452.237-75 Clearance of contractor personnel.

As prescribed in 2437.110(e), insert the following clause in solicitations and contracts.

CLEARANCE OF CONTRACTOR PERSONNEL. (OCT 1999)

(a) General. This contract requires contractor employees to work in, and have access to, a HUD facility. All such employees shall be required to provide background information and obtain a HUD building pass prior to working in the HUD facility.

(b) Background information. (1) For each contractor employee subject to the require-

ments of this clause, the contractor shall complete and deliver to the Government Technical Representative (GTR) the following forms: Form FD-258, "Fingerprinting Charts" (original and one copy); and GSA Form 176, "Statement of Personal History" (original and one copy). The GTR will provide the contractor with blank forms upon request.

(2) The contractor shall deliver the forms required by paragraph (b)(1) to the GTR within five (5) calendar days after contract award or not later than five (5) calendar days before a covered employee will begin work at the HUD facility.

(3) The information provided in accordance with paragraph (b)(1) will be used to perform a background check to determine the eligibility of the contractor employees to work in the HUD facility. After completion of such review, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work in the HUD facility. The contractor shall immediately remove such employees from work on this contract which requires the employees' physical presence in the HUD facility.

(c) *Building passes.* (1) HUD will issue a building pass to each contractor employee determined to be eligible pursuant to the background check in paragraph (b). The Contractor shall provide the GTR with the names and Social Security numbers of all such employees. Contractor employees shall have their building passes on their persons at all times while working on HUD premises and shall present passes for inspection upon request by HUD officials or HUD security personnel.

(2) Building passes shall identify individuals as contractor employees and shall have an expiration date not exceeding the current term of the contract. Passes shall be renewed for each succeeding contract period, if any.

(3) The contractor shall return a contractor employee's pass to the GTR when the employment of any such employee is terminated, or when the employee no longer has a need for access to the HUD facility. Upon expiration of this contract, the contractor shall return to the GTR all building passes issued by HUD and not previously returned. The contractor is responsible for accounting for all passes issued to the contractor's employees.

(d) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit for his/her assigned contractual duties, and therefore will no longer be permitted access to the HUD facility. The contractor shall take immediate steps to remove such

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an employee from working on this contract and provide a suitable replacement.

(e) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

[64 FR 46099, Aug. 23, 1999]

2452.237-77 Observance of legal holidays and administrative leave.

As prescribed in 2437.110(f), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND
ADMINISTRATIVE LEAVE (OCT 1999)

(a)(1) The Department of Housing and Urban Development observes the following days as holidays—

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(2) When any holiday specified in (a)(1) falls on a Saturday, the preceding Friday shall be observed. When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(b)(1) HUD may close a HUD facility for all or a portion of a business day as a result of—

(A) Granting administrative leave to non-essential HUD employees (e.g., unanticipated holiday);

(B) Inclement weather;

(C) Failure of Congress to appropriate operational funds;

(D) Or any other reason.

(2) In such cases, contractor personnel not classified as essential, i.e., not performing critical round-the-clock services or tasks, who are not already on duty at the facility shall not report to the facility. Such contractor personnel already present shall be dismissed and shall leave the facility.

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(3) The contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled for performance during the period in which HUD employees are dismissed, and shall be guided by any specific instructions of the Contracting Officer or his/her duly authorized representative.

(c) When contractor personnel services are not required or provided due to closure of a HUD facility as described in this clause, the contractor shall be compensated as follows—

(1) For fixed-price contracts, deductions in the contractor's price will be computed as follows—

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(B) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, HUD shall not reimburse as direct costs, the costs of salaries or wages of contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(d) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

[64 FR 46100, Aug. 23, 1999]

2452.239-70 Background investigations for sensitive automated systems/applications.

As prescribed in 2439.107(a), insert the following clause:

BACKGROUND INVESTIGATIONS FOR SENSITIVE
AUTOMATED SYSTEMS/APPLICATIONS (OCT 1999)

(a) *General.* This contract involves work on, or access to, [insert name or other identifier], a HUD information resource that is either a major application system or any general support system. A major application system is a mission critical system, a system

or information resource which has high investment cost, or any system which contains Privacy Act-covered data. A general support system is any computer facility or major component thereof, or any network or telecommunications resource. All contractor employees working on this contract in positions which HUD has determined to have sensitive access to the information resource(s) identified above are required to have a background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using or operating the resources identified above, consistent with 5 CFR part 731. HUD may bar contractor employees from working on this contract for failing to meet or maintain the applicable suitability standards administered by the Department's Personnel Security Branch.

(b) *Citizenship-related requirements.* All contractor employees as described in paragraph (a) shall: (1) be United States (U.S.) citizens living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Background investigation process.* (1) The GTR shall notify the contractor of those contractor employee positions requiring background investigations. For each contractor employee in such a position, the contractor shall submit the following completed forms: Standard Form (SF) 85P, Questionnaire for Public Trust Positions; FD-258, Fingerprint Chart; Fair Credit Reporting Act authorization form; and other information as may be necessary. The contractor shall submit an original and one copy of the SF 85P.

(2) The contractor shall deliver the forms and information required in paragraph (c)(1) to the GTR as soon as practicable once the contractor knows that the employee will be assigned to this contract, and no later than seven (7) calendar days after the employee begins work on this contract.

(3) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the security forms described in paragraph (c)(1).

(4) Upon completion of the investigation process, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work on this contract. The contractor shall immediately remove such employees from work on this contract.

(5) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD terminates employment or otherwise is no longer performing work under this contract. The contractor shall provide a copy of the written notice to the Contracting Officer.

(d) *Security breach notification.* The contractor shall immediately notify the GTR and the Contracting Officer of any breach or

suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(e) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(2) The contractor shall require that any employees who may have access to the automated systems identified in paragraph (a) sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of three years after final payment under this contract.

(f) *Security procedures.* The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of HUD Handbook 2400.24. The contractor shall provide a copy of such procedures and any revisions made to them during the period of the contract to the GTR.

(g) *Contractor compliance.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(h) *Other clearance requirements.* When any work performed by contractor personnel on-site in a HUD facility meets the criteria set forth in HUDAR 2437.110(e), the contractor shall also comply with the requirements of the clause at 48 CFR 2452.237-75, Clearance of Contractor Personnel.

(i) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

[64 FR 46100, Aug. 23, 1999]

2452.239-71 Information Technology Virus Security.

As prescribed in 2439.107(b), insert the following clause:

INFORMATION TECHNOLOGY VIRUS SECURITY (FEB 2000)

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD

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using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any]

“This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery.”

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not subrogate the rights of the Government under any other clause of this contract.

(End of clause)

[65 FR 3577, Jan. 21, 2000]

2452.242-70 Indirect costs.

As prescribed in 2442.705-70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

INDIRECT COSTS (APR 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, “Allowable Cost and Payment” the rates listed below are established. If the column entitled, “Ceiling Rate” has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base
Effective date until amended:				
(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period				
(End of clause)				

2452.242-71 Project management system.

As prescribed in 2442.1107, insert the following clause:

PROJECT MANAGEMENT SYSTEM (FEB 2000)

(a) Within the time period specified elsewhere in this contract, or as directed by the Contracting Officer, the Contractor shall provide to the GTR and Contracting Officer a project management baseline plan and routine reports showing the Contractor's actual progress against the baseline plan.

(b) The project management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of—

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the project schedule, including the period of time needed to accomplish each task and activity (see i(B));

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and,

(D) Provides the rationale for project organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and (B) Identifies significant problems, or potential problems, their causes, proposed corrective actions, and the net effect on contract completion.

(ii) A graphic portion showing:

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(A) The schedule status and degree of completion of the tasks, activities and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan;

(B) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(c) The formats, forms and/or software to be used for the project management system under this contract shall be [Contracting Officer insert appropriate language—"as prescribed in the schedule;" "a format, forms and/or software designated by the GTR;" or, "the contractor's own format, forms and/or software, subject to the approval of the GTR."]

(End of clause)

[65 FR 3578, Jan. 21, 2000]

2452.246-70 Inspection and acceptance.

As prescribed in 2446.502-70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

INSPECTION AND ACCEPTANCE (APR 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF-26, or other individual as designated by the Contracting Officer of GTR.

(End of clause)

2452.251-70 Contractor employee travel.

As prescribed in 2451.7001, insert the following clause in all cost-reimbursement solicitations and contracts involving travel:

CONTRACTOR EMPLOYEE TRAVEL (OCT 1999)

(a) To the maximum extent practical, the Contractor shall make use of travel discounts which are available to Federal employees while traveling in the conduct of official Government business. Such discounts may include, but are not limited to, lodging and rental car rates.

(b) The Contractor shall be responsible for obtaining and/or providing to his/her employees written evidence of their status with regard to their performance of Government contract work needed to obtain such discounts.

(End of clause)

[64 FR 46101, Aug. 23, 1999]

PART 2453—FORMS

Sec.

2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

2453.215 Contracting by negotiation.

2453.217 Special contracting methods.

2453.217-70 Form HUD-730, Award/Modification of Interagency Agreement.

2453.227 Patents, data, and copyrights.

2453.227-70 Form HUD-770, Report of Inventions and Subcontracts.

2453.242 Contract administration.

2453.246 Quality Assurance.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46543, Nov. 17, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2453 appear at 64 FR 46101, Aug. 23, 1999.

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.215 Contracting by negotiation.

2453.217 Special contracting methods.

2453.217-70 Form HUD-730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), form HUD-730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227-70 Form HUD-770, Report of Inventions and Subcontracts.

As prescribed in 2427.305-2, form HUD-770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

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2453.242 Contract administration.

2453.246 Quality Assurance.